

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 19

BARRIER WEST, INC.

Employer,

and

MACHINISTS DISTRICT LODGE W-1

Union.

NO. 19-RC-15300

EMPLOYER'S EXCEPTIONS TO
REGIONAL DIRECTOR'S REPORT AND
RECOMMENDATION ON OBJECTION

Barrier West, Inc. ("Barrier West"), by and through its undersigned attorneys of record and pursuant to Section 102.69 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, hereby submits the following exceptions to the Regional Director's Report and Recommendation on Objection (the "Report") issued by Region 19 Director Richard Ahearn (the "Regional Director") on June 9, 2010.

Barrier West takes exception to the Regional Director's finding that hospitalized employee and eligible voter Dan Alderman's "inability to vote does not constitute objectionable conduct that warrants setting aside the election," and to a number of his related arguments and conclusions, including the following:

1. "In the instant case, there is no argument that Alderman was unable to vote for any reason other than his hospitalization, a factor undoubtedly outside the control of the parties to the election." Report, p. 3.
2. "[T]here is no evidence, or even argument that [Alderman's] absence was related to conduct on the part of the Union, the Employer or the Board." Report, p. 3.
3. Lemco Construction, Inc., 283 NLRB 459 (1987) does not support Barrier West's position. Report, p. 4.

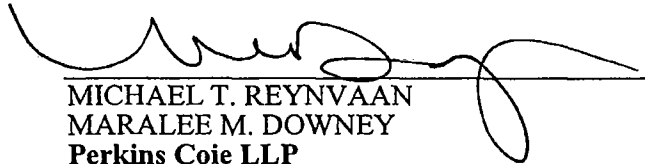
4. The distinction between an employee with a disability and an employee on vacation "is not determinative[.]" Report, p. 5.

5. "[T]he Employer presents no evidence that would indicate that Alderman's failure to vote was the result of non-compliance by the Region with the disability accommodation provisions of the Representation Casehandling Manual or of the Accommodation provisions contained in Section 4 of the Stipulated Election Agreement." Report, p. 5

6. Accommodating Mr. Alderman's disability could be considered a material breach of the parties' Stipulated Election Agreement. Report, pp. 5-6.

For the reasons discussed in the accompanying brief, the Regional Director's arguments and conclusions are largely unsupported in fact and law. The Board should reject the Regional Director's recommendation. Barrier West's objection should be sustained and a new election ordered.

Signed at Seattle, Washington, this 23 day of June, 2010.



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Attorneys for Barrier West, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on June 23, 2010, she caused to be served on the persons listed below in the manner shown, a copy of the foregoing document:

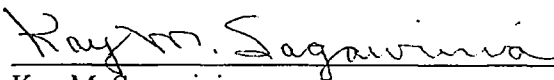
Richard L. Ahearn
Regional Director
National Labor Relations Board, Region 19
Henry M. Jackson Federal Building
915 Second Avenue, Room 2948
Seattle, WA 98174-1078

- ☐ United States Mail, First Class
- ☐ Via Overnight Delivery
- ☒ By Messenger
- ☐ By Facsimile
- ☐ By eFiling

Claudio Figueroa
International Association of Machinists
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620 Coolidge Drive, Suite 130
Folsom, CA 95630

- ☒ United States Mail, First Class
- ☐ Via Overnight Delivery
- ☐ By Messenger
- ☐ By Facsimile
- ☐ By eFiling

Dated at Seattle, Washington, this 23rd day of June, 2010.



Kay M. Sagawinia

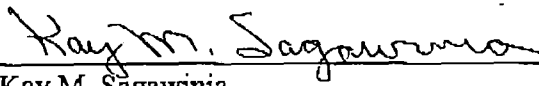
CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on June 24, 2010, she caused to be served on the person listed below in the manner shown, a copy of the foregoing document:

Claudio Figueroa
International Association of Machinists
& Aerospace Workers, AFL-CIO
620 Coolidge Drive, Suite 130
Folsom, CA 95630

- ☐ United States Mail, First Class
- ☒ Via Overnight Delivery
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- ☐ By Facsimile
- ☐ By eFiling

Dated at Seattle, Washington, this 24th day of June, 2010.


Kay M. Sagawinia

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that on June 23, 2010, she caused to be served a copy of the foregoing document in the manner shown below on:

National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570-0001

- ☐ United States Mail, First Class
- ☐ Via Overnight Delivery
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Dated at Seattle, Washington, this 23rd day of June, 2010.

Kay M. Sagawinia
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